

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-080529,
		C-080530
Plaintiff-Appellee,	:	TRIAL NOS. 08CRB-3563A,
		08CRB-3563B
vs.	:	
		<i>JUDGMENT ENTRY.</i>
LANDON SLAWSON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a bench trial, defendant-appellant Landon Slawson was convicted of possession of marijuana² and possession of an open flask of alcohol.³ Bringing forth two assignments of error, he appeals his convictions. We affirm.

At trial, the state presented the following evidence. On February 1, 2008, Cincinnati Police Officer John Taulbee stopped Slawson's car after checking Slawson's license plates on his computer and determining that there was a warrant for Slawson's arrest. Upon stopping the car, Officer Taulbee testified, Slawson was sitting in the passenger seat with an open flask of alcohol behind the seat. Officer Taulbee testified that he had noticed an odor of marijuana coming from the car, so

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² Cincinnati Municipal Code 910.23.

³ R.C. 4301.62(B)(4).

he searched the car and found marijuana flakes on the floor near the driver seat and on the floor near the passenger seat. A bag of marijuana was also recovered from the passenger-door console, near where Slawson was sitting. Officer Taulbee said that he charged Slawson with possession of marijuana because Slawson owned the car and because the marijuana was found in the console of the passenger door next to where Slawson was sitting.

Slawson testified in his own defense. He said that the marijuana was not his and that it was probably left by someone who had borrowed his car. He explained that he worked at an automobile detail shop and that others often drove his car to pick up other cars from dealerships. He testified that some co-workers who had borrowed his car were known drug users, but that he did not use drugs. He also testified that although he knew what marijuana smelled like, he believed his car smelled like cigarettes. Slawson admitted that the open flask of alcohol was his and that he had been drinking, which was why his friend was driving the car.

The trial court convicted Slawson of possession of marijuana and an open container of alcohol. With respect to the marijuana conviction, the trial court stated that it did not believe Slawson's testimony that the marijuana belonged to a co-worker who had borrowed Slawson's car.

In his first assignment of error, Slawson contests the weight and sufficiency of the evidence underlying his conviction for possession of marijuana. Specifically, Slawson argues that the state did not prove that he had knowingly possessed the marijuana. We disagree.

When reviewing the sufficiency of the evidence, we must determine "whether after viewing the probative evidence and inferences reasonably drawn therefrom in

the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense proved beyond a reasonable doubt.”⁴ On the other hand, when reviewing the manifest weight of the evidence, we must review the entire record, weigh the evidence, and determine whether the trier of fact lost its way and created a manifest miscarriage of justice.⁵

Slawson was convicted of possession of marijuana, in violation of Cincinnati Municipal Code 910-23, which provides that “no person shall knowingly obtain, possess, or use marijuana, in an amount less than two hundred grams.” The culpable mental state of “knowingly” is defined in Ohio as follows: “A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances exist.”⁶

Possession is defined as “having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.”⁷ Possession can be either actual or constructive.⁸ Constructive possession exists when a person is able to exercise control over the contraband, even if that person does not physically possess it.⁹ The person must be “conscious of the presence of the object.”¹⁰ Constructive possession can be shown through circumstantial evidence.¹¹

⁴ *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

⁵ *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

⁶ R.C. 2925.22(B).

⁷ R.C. 2925.01(K).

⁸ *State v. Haynes* (1971), 25 Ohio St.2d 264, 267 N.E.2d 787.

⁹ *State v. Bettis*, 1st Dist. No. C-060202, 2007-Ohio-1724, ¶10.

¹⁰ See *State v. Hankerson* (1982), 70 Ohio St.2d 87, 91, 434 N.E.2d 1362.

¹¹ *Bettis*, supra.

Although a person's mere presence in the vicinity of drugs does not prove dominion and control, readily accessible drugs in proximity to an accused may constitute circumstantial evidence to support a finding of constructive possession.¹² Here, Slawson was riding as a passenger in a car he owned, within easy reaching distance of a bag of marijuana in the console of the passenger door, which demonstrated his control over the marijuana. Furthermore, there were flakes of marijuana on the floorboards of both the passenger and the driver's sides of the car, as well as an odor of marijuana emanating from the vehicle. Given that Slawson knew what marijuana smelled like, we are persuaded that it could reasonably be inferred that Slawson was "conscious" of the marijuana in his car. Based on the foregoing circumstances, we conclude that a rational fact-finder, viewing the evidence in a light most favorable to the state, could have found that the state had proved beyond a reasonable doubt that Slawson possessed the marijuana found in his car.

Furthermore, we conclude, upon full review of the record, that Slawson's conviction was not against the manifest weight of the evidence. Accordingly, the first assignment of error is overruled.

In his second assignment of error, Slawson contends that he was denied effective assistance of counsel. He argues that his trial counsel should have filed a motion to suppress the marijuana and the open flask of alcohol found in his car. This assignment of error is not well taken.

Slawson has not demonstrated that his counsel's representation fell below an objective standard of reasonableness or that, but for counsel's unprofessional errors,

¹² See *State v. Scalf* (1998), 126 Ohio App.3d 614, 620, 710 N.E.2d 1206.

the result of the proceedings would have been otherwise. Therefore, he has failed to meet his burden to show ineffective assistance of counsel.¹³ Here, the stop of the car was proper. There was a warrant for Slawson's arrest. Also, an odor of marijuana emanating from the car was alone enough to provide probable cause to search the car.¹⁴ Accordingly, the second assignment of error is overruled.

The trial court's judgment is accordingly affirmed.

Furthermore, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and SUNDERMANN, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 1, 2009

per order of the Court _____.
Presiding Judge

¹³ *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052; *State v. Hirsch* (1998), 129 Ohio App.3d 294, 717 N.E.2d 789.

¹⁴ See *State v. Howard*, 1st Dist. Nos. C-070174 and C-070175, 2008-Ohio-2706, ¶10.